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27 NOV 1978

MEMORANDUM FOR: Deputy Director for Operations
(Attention: Eloise Page)

Deputy Director for Science and Technology
(Attention: Ernest J. Zellmer)

Director, National Foreign Assessment Center
(Attention: Sayre Stevens)

General Counsel
(Attention: [REDACTED])

25X1

FROM: Michael J. Malanick
Associate Deputy Director for Administration

SUBJECT: Implementation of E.O. 12065

Attached are comments that have been received on the implementation of E.O. 12065 package you were sent on 14 November 1978. These comments, plus comments and recommendations from the task forces involved, have been arranged in the order they appeared in the individual documents that made up the implementation package:

- Tab A - Regulation
- Tab B - Implementation Handbook
- Tab C - Issues Paper
- Tab D - Waivers Paper

It appears that in general, very few major problems have been identified and hopefully those issues that have been raised can be resolved quickly during our meeting at 1400 today.

[REDACTED]

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Michael J. Malanick

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TAB A HR [] AGENCY INFORMATION SECURITY PROGRAM

Paragraph 3b(1)

OGC

The entire paragraph should be amended to recognize that, in law, the CIA and Office of the Director are not independent of one another. We recommend the provision read:

(1) The provisions of this regulation apply to the Central Intelligence Agency, including the Office of the Director of Central Intelligence, hereinafter referred to as the "Agency."

Task Force

RECOMMENDATION: Paragraph should be amended accordingly.

Paragraph 3c

DDS&T

Since this regulation covers the Agency Information Security Program by definition in the Synopsis, suggest that the reader be informed that information on the implementation of that portion of EO 12065 concerning safeguarding of national security information can be found in HR [].

Task Force

RECOMMENDATION: The three task forces (Markings, Classification/Declassification/Mandatory Review, and Training) still feel that the use of a single handbook entirely devoted to the implementation of the new order should be considered. If safeguarding procedures continue to be excluded from [] there will be an important link missing. This same recommendation was made by DDS&T and OGC and we strongly agree. If this cannot be accomplished, Para 3c of [] should be changed to read: "c. POLICY AND PROCEDURES. HHB [] and HR's [] implement the program..."

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Paragraph 3d(1)

DDS&T

Neither the draft regulation nor the handbook establish the Agency committee to act on suggestions and complaints, see Section 5-404 of the Order. We suggest the committee be established.

Task Force

RECOMMENDATION: Para d (1) states "...and for chairing an Agency committee with authority to act on all suggestions and complaints with respect to the administration of the Agency information security program." Actual makeup of this committee can be decided at the 27 November final meeting or at a later date by the DDA.

Paragraph 3d(2)

OGC

The Office of General Counsel is the Agency focal point for contact with the Department of Justice. The draft proposes that the AI/DDA will in some cases serve as that focal point. We believe this would be inappropriate, and that from the last sentence should be deleted all that follows the word "Council," to provide: On information security program matters, he is the focal point for contact with the National Security Council.

Task Force

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COMMENT: The language of paragraph 3d(2) of HR [] states that the AI/DDA in carrying out his responsibilities as the Agency's Focal Point for Information Security Program matters will handle all related contacts with the Department of Justice through the Office of General Counsel. It was thought that though the proposed arrangement would get the AI/DDA directly involved with the Department of Justice on Information Security Program matters, it would do so in a manner that would preserve the Office of General Counsel's position as the official focal point for contact with that organization. If a problem truly exists on this matter we feel that the above paragraph should be amended per OGC's recommendation.

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NFAC

No comment on HR []

DDO

No comment on HR []

DDA

No comment on HR []

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TAB B HHB



Paragraph 3 - Duration of Classification

NFAC

Para 3d, line 4: suggest that phrase "from experience and common sense" be changed to "analytical knowledge and experience" to more accurately reflect NFAC reasoning.

While the justifications for extending the classification beyond six years cover all contingencies, the inclusion in (4) of such diverse subjects as intelligence, military, diplomatic, nuclear, and cryptologic would invite confusion in the advent the reason for an extension was challenged. It is a grouping of unlike items for which the duration of classification will vary and lead to non-uniformity in classification.

OGC

Paragraphs 3a. and 3b. should be reversed for a more logical presentation of the subject matter. Paragraph 3c should be amended as suggested at Tab A, essentially for clarity, but also to recognize that the Agency is not required to issue classification guides that direct derivative classification, notwithstanding the fact that some guidance is required.

Paragraph 3d should be amended in accordance with our recommendations at Tab B. The word "shall" has been replaced by "may...when appropriate" in order to guard against the possibility that the provision inadvertently may have omitted an acceptable justification for classifying information for longer than six years. Classifiers may, therefore, cite a reason other than one of those listed as may be appropriate.

Paragraph 3d(2) should refer simply to information protected "by statute," rather than by citing the National Security Act. Since 2(b) refers to information protected by the CIA Act of 1949, the current citation is incorrect.

Paragraph 3d(3) seems unduly to limit the persons whose lives the Agency may wish to protect; thus, we suggest the sentence read:

(3) Place persons in jeopardy.

In addition we have made two editorial suggestions.

DDS&T

The four reasons stated in this paragraph for extension of classification beyond six years were developed internally. Reasons (1), (2), and (3) are specific, easy to understand and can be applied with assurance. Reason 4, however, is a "catch-all", it is diverse, complicated and we believe will lead to misunderstanding, uncertainty on the elements which overlap and are far too controversial as to interpretation for universal use and precise selection. We suggest that reason 4 be divided into several reasons, examples may be found in the draft guides submitted by various Directorates.

Task Force

COMMENT: See Attachment B1 for rewrite of paragraph 3 of HHB

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Paragraph 5 - Classification Requirements

OGC

Paragraph 5c. The draft fails to mention that there are two categories of information for which there is a presumption of classifiability: foreign government information and information that would reveal a confidential foreign source. Accordingly, we recommend the provision read:

c. Since the unauthorized disclosure of Foreign Government Information or of a confidential foreign source is presumed to cause at least identifiable damage to the national security, all such information may be classified at the "Confidential" level unless a more restrictive classification is specified by the foreign government(s) or international organization(s) of governments concerned or is otherwise appropriate, or if that presumption is shown to be invalid.

Task Force

COMMENT: The second category of information, "a confidential foreign source," was indeed overlooked by the drafters. Para 5c, as shown above, should be inserted in toto.

Paragraph 6 - Classification Authority

DDS&T

Para 6d - Designation in writing of derivative classifiers is not required by the Executive Order.

Task Force

COMMENT: Though, admittedly, the new E.O. does not require that derivative classifiers be designated in writing, it was felt that such a system is highly desirable if the Agency is to establish the same type of control

over derivative classifiers that has been established for original classifiers. It did not seem logical to require that all original classifiers be designated in writing if derivative classifiers are not subjected to the same requirement.

Paragraph 8 - Classification Authority Delegation Procedures

DDO

Concerning paragraph 8b(2) of the draft handbook, we submit that the Deputy Director for Operations should have the authority to establish original classification authority to classify CONFIDENTIAL and SECRET documents without requiring the concurrence of the Agency Security Classification Officer. The latter would be notified of any and all designations of such authority within the Directorate.

OGC

Paragraph 8b(2). This paragraph provides that the delegation of Secret or Confidential classification authority approved by an appropriate Deputy Director must be sent to the Agency Security Classification Officer for concurrence. It might be appropriate, since that official has no line control over the deputies, to assign the responsibility instead to the DDCI as follows:

...and sent through RAB/ISAS for the concurrence of the DDCI.

Task Force

COMMENT: We recommend changing the last line of paragraph 8b(2) as follows:

...and sent to RAB/ISAS.

The preamble of paragraph 8c would be changed as follows:

Upon receipt of an approved NSCA delegation memorandum, RAB/ISAS will inform the Position Management and Compensation Division, Office of Personnel, which will make the necessary changes to the staffing complement. RAB/ISAS will forward a copy of the approved delegation memorandum to the requesting office....

Paragraph 9g - Other Categories of Information Related to National Security

NOTE: All items submitted have been covered in Tab C, under Paragraph D of the Issues Paper.

Paragraph 10 - Derivative Classification Authority and Procedures

NFAC

Para 10a - The last sentence of this paragraph limits the classification of information until 1 April 1979 to only those officials with original classification authority. No reason is given for this four month delay in the use of the classification guides by those having derivative classification authority.

Para 11d - Again the caveat that until 1 April 1979 only officials with original classification authority are authorized to classify information. No explanation of why the four month delay is necessary is included.

DDS&T

Para 10a and para 11d - At the end of each of the cited paragraphs the following is stated "except that until 1 April 1979 only officials with original classification authority are authorized to classify information". The EO does not require this prohibition and we do not agree that such a limitation should be imposed. To include this "exception" means that from 1 Dec 78 to 1 Apr 79 no derivative classification action can be taken. If this period of time is needed merely to accomplish administrative and bureaucratic procedures, we suggest that a positive approach be taken to the effect that current classifiers under EO 11652 are permitted to continue classification actions in consonance with the provisions of EO 12065 until such time as their positions are formally, in writing, designated as having original classification or derivative classification authority under Section 1-204 of EO 12065.

Task Force

COMMENT: The reason for the four month delay in permitting derivative classifiers to use the classification guides was to provide a test period during which the adequacy, practicality and applicability of the guides could be evaluated by individuals having original classification authority. Also, it was envisioned that during this test period, determinations could be made as to which employees would be allowed to use the classification guides and systems established for documenting the assignment of such authority.

The above recommendation was made with the full realization that as conditions now stand, the decisions on when, how and if to use classification guides is something that will have to be determined by each directorate.

NFAC

Para 10e - The NFAC Working Group in drafting the NFAC Classification Guide provided for occasions when the final product needed to be classified at a higher level than sources used. This subparagraph limits this authority to a person having Top Secret original classification authority. It should be amended to include use of the classification guide.

Task Force

COMMENT: We recommend that the last portion of paragraph 10e be amended to read "...the combined information must be classified by a person with appropriate original classification authority."

Regarding the use of classification guides, given the great number of variables that might be involved in classifying material of the type cited, we question whether classification guides should really be used in such instances or whether the use of original classification authority might not be the best way to go. It would seem that to try and predetermine what factors might be present in the various sources used and the level and durations of classification they might support would be an almost impossible task. This same type of determination could, however, be made quite easily once all of the factors involved are known and thus would seem to lend itself very well to the use of original classification authority.

Paragraph 11 - Classification Guides

OGC

Paragraph 11. We recognize, notwithstanding our scepticism as set forth in our comments of the Issues Paper, that there may be some information that may actually lend itself to inclusion in a guide that directs derivative classification. For this reason we would not prohibit their issuance. Rather, we simply would amend the draft to make it clear that there is a real distinction between "guidance" and the guides contemplated by the handbook. We suggest, therefore, the following for preamble of section 11:

The Agency shall promulgate classification guides to facilitate the proper and uniform classification of information. In addition the Agency may promulgate guides to direct derivative classification.

In addition, we recommend the deletion of section 11h, since it is inappropriate to direct the level of classification of documents, yet to be written and approved, that might not warrant that Secret level.

Task Force COMMENT: Regarding expanding the preamble as proposed, we foresee problems in establishing exactly what constitutes a classification guide that directs derivative classification and what constitutes classification guidance. If it is necessary to expand the preamble, we suggest the following:

The Agency shall promulgate classification guides to facilitate the proper and uniform classification of information. These guides may also be used to direct derivative classification.

Regarding the deletion of 11h--fully agree with its deletion.

DDS&T Para 11e - The EO does not limit the authority of original classifiers as long as they comply with other provisions of the Order. An original classifier should not be limited to only originally classifying information.

Task Force COMMENT: The only restriction proposed for original classifiers that is not required by the new executive order is that they use their original classification authority only when appropriate guidelines are not available. This was done in order to maintain the maximum degree of consistency within the classification process.

This restriction can very easily be lifted by minor word changes in certain sections of paragraph 11 and it is recommended that at this point in time, original classifiers be given the option of using either their original classification authority or the classification guides. See Attachment B2 for rewrite of paragraph 11 of HHB

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DDS&T Para 11f - This paragraph is unclear. One interpretation is that documents containing information covered in the classification guides is classified as a derivative classification action. This means that only Deputy Directors and Heads of Independent Offices are original classifiers. However, paragraph g. states that the DDCI will approve the guides for use as Agency guides.

Task Force COMMENT: The interpretation that documents classified through the use of classification guides represent derivative classification actions is true regardless of whether the individual taking such action is an authorized original

or derivative classifier. The fact that a classification guide is used as the basis for classification makes it a derivative classification action.

Paragraph 11g requires that the individual guides prepared by each Deputy Director or Head of Independent Office be submitted to the DDCI "who will approve them for use as the Agency Classification Guide" is one of the three instances cited in the Issues Paper where the proposed Agency implementation actions exceed those required by E.O. 12065.

See Attachment B2.

Paragraph 13 - Declassification and Downgrading

OGC

Since the so-called balancing test described at paragraphs 13c and 13d is currently under review by the Interagency Classification Review Committee, the language of the handbook may have to be amended in the near future. The ICRC meets next Tuesday, 28 November, and we expect to have more appropriate language by then.

Task Force

COMMENT: Revisions to the handbook will be made whenever required.

Paragraph 16 - Mandatory Review for Declassification

OGC

Para 16a(2). We are somewhat confused by the reference to paragraphs 15b, f, and g, since the information covered by those paragraphs is not exempted from mandatory review. The correct citation may be paragraph 16e.

Task Force

COMMENT: The correct citation should be paragraph 16e and f below. We will revise para 16a(2) to include this.

OGC

Para 16 General. It is our opinion that language from the ISOO Directive No. 1 implementing E.O. 12065 should be included into this section on mandatory review. In particular, we believe users of the handbook should be made aware that the time limits established for responding to requestors have been changed and are different from those required under the FOIA. A copy of the relevant language is a Tab C.

DDS&T The process to decide appeals required by Section 5-404c (Mandatory Review) of the Order is not addressed in the handbook.

Task Force RECOMMENDATION: The preamble of paragraph 16 should have an additional sentence added: "Requests for declassification under this provision shall be upon within 60 days." This will alert the users of this HHB that the time limit for response to requestors has been changed. However, further procedures implementing the mandatory review, based on the Order or the ISOO Directive No. 1, should be incorporated in the revision of HHB [] by the Information and Privacy Staff.

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Paragraph 16i leads users of HHB [] to HHB []

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3. DURATION OF CLASSIFICATION

Information shall remain classified only as long as its unauthorized disclosure reasonably could be expected to result in at least identifiable damage to the national security. At the time information is classified, it shall be marked with the date or event whose occurrence would make continued classification unnecessary or would make review for declassification appropriate, whichever is earlier. This date or event for automatic declassification, or for review for declassification, must not exceed six years from the date of classification unless it is determined that unauthorized disclosure of the information reasonably could be expected to result in at least identifiable damage to the national security even after a period of six years. In the latter case the information shall be classified for a longer period as provided hereunder. (If the information is not marked with such a date or event it will become automatically declassified in six years.)

a. Only the DCI or other Agency officials having Top Secret original classification authority may authorize a classification period exceeding six years. Originally classified information that is so designated shall be identified with the authority and reason for the extended classification, as provided in paragraph d below.

classification that information should remain classified for a period in excess of six years but designation of a specific date or event for automatic declassification is impossible, the information shall be marked with a date or event for declassification review.

c. In no case shall the date or event for automatic declassification, or for review for declassification, be set at more than 20 years, except that foreign government information (paragraph 9b below) may be classified for up to 30 years prior to declassification or review. Earlier dates for declassification or review shall be established when appropriate.

d. Information for which classification is extended by an original Top Secret classifier shall be marked as specified in paragraph 12b(1) below. The reason for extension shall be indicated on the information either in narrative form or by citing one or more of the basic justifications for extension set forth hereunder, which summarize those provided in approved Agency classification guides (paragraph e below). Such citations (e.g., "3d(3)") constitute the Top Secret classifier's certification that the information is expected to retain its national security sensitivity, and therefore requires continued protection, during the entire classification period assigned. The following citations may be used, as applicable, for information that:

(1) Is foreign government information, as described in paragraph 9b below, provided to or acquired by the United States Government with the expressed or implied expectation that its confidentiality would be maintained for a period exceeding six years in length.

(2) Pertains to United States Government programs for safeguarding nuclear materials or facilities (paragraph 9f below) and is determined by the Department of Energy or its predecessor agencies, pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.), to require continued protection beyond six years.

(3) Could reveal intelligence activities, sources or methods including CIA missions, functions, organizational or financial data and personnel matters, as further described in paragraph 9c below, which require protection for longer than six years pursuant to the National Security Act of 1947 or the CIA Act of 1949 (50 U.S.C. 403a, et seq.).

(4) Is cryptologic information requiring protection beyond six years in accordance with procedures promulgated by the Secretary of Defense pursuant to Executive Order 12065 and approved as to intelligence sources and methods by the Director of Central Intelligence, or pertains to other cryptographic matters requiring such protection.

(5) Otherwise concerns intelligence or counter-intelligence programs or activities (paragraph 9c below) and

having Top Secret classification authority, in accordance with paragraph a above. Therefore, the guides shall be followed by derivative classifiers in setting classification levels and duration limits, and may also be followed by original classifiers having Top Secret, Secret, or Confidential classification authority. In such cases the information is derivatively classified and shall be marked as specified in paragraph 12b(2) below. Derivative classifiers, and original classifiers having Secret or Confidential authority otherwise must refer any decisions as to classification of information for periods in excess of six years to officials with original Top Secret classification authority. As provided in paragraph a above, original Top Secret classifiers may extend classification without reference to a guide, upon determination based on their knowledge, experience, or common sense that an initial classification period of six years or less would be inappropriate for the information being classified, and subject to the provisions of paragraphs b, c, and d above.

f. Top Secret or Secret information shall be marked with a date or event for automatic downgrading to appropriate lower classification levels whenever it can be determined that the occurrence of such date or event would sufficiently reduce the degree of national security damage that unauthorized disclosure of the information could cause.

could, if disclosed within six years, result in action to negate or impede such activities or programs or expose United States intelligence or counterintelligence vulnerabilities or capabilities.

(6) Pertains to a military plan, weapon or weapons system or operation as described in paragraph 9a below and could, if disclosed within six years, result in nullification or reduction in the effectiveness of such a plan, weapon, system, or operation or could otherwise deprive the United States of a military advantage.

(7) Concerns diplomatic or other foreign relations matters or activities as described in paragraph 9d below and could, if disclosed within six years, result in action to counter, nullify, or impede the orderly implementation of United States foreign policies, or could deprive the United States of a diplomatic, economic, scientific or technological (paragraph 9e below), or other informational advantage.

(8) Could, if revealed within six years, place a person in jeopardy.

e. Agency guides for derivative classification (paragraph 11 below) set forth for each category of classifiable information a level and duration of classification and, where applicable, a justification for extension of classification beyond six years. The guides reflect a series of original classification decisions made by officials

11. CLASSIFICATION GUIDES

The Agency shall promulgate classification guides to facilitate the proper and uniform classification of information. These guides may also be used to direct derivative classification.

a. The classification guides shall be approved in writing by Deputy Directors or Heads of Independent Offices having Top Secret original classification authority. Such approval constitutes an original classification decision.

b. Approved classification guides shall be submitted through the AI/DDA to the Deputy Director of Central Intelligence for approval for use as the Agency Classification Guide.

c. The classification guides shall be based on the Agency classification criteria set forth in paragraph 9 above and shall not include any categories of information not covered therein.

d. Each classification guide shall specify the information subject to classification in sufficient detail to permit its ready and uniform identification and shall set forth the classification level and duration in each instance as well as, where applicable, justification for any extension beyond six years.

e. The classification guides shall be used in connection with this handbook, with particular reference to paragraph 12 on identification and markings.

f. Personnel with derivative classification authority shall classify information as prescribed by the classification guides. Personnel with original classification authority also may classify information in this manner. In either case, the classification of information as prescribed by the guides is derivative classification, and such information shall be marked in accordance with paragraph 12b(2).

g. Personnel with original classification authority shall ensure that their original classification decisions are consistent with the classification guides as to level and duration of classification.

h. Access to classification guides shall be restricted to personnel requiring such access for the proper discharge of their official duties. The DDA Classification Guide is designed for Agency-wide applicability and is to be distributed accordingly.

i. The classification guides shall be kept current and shall be fully reviewed at least every two years. The directorates and Independent Offices shall submit all proposed additions, deletions, or other changes in the guides to the Agency Security Classification Officer, ISAS/DDA, for coordination. Approval procedures for such changes are the same as those specified in paragraphs a and b above. The Agency Security Classification Officer shall maintain the record copy of each guide and of all approved changes thereto.

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TAB C ISSUES PAPER

Paragraph B.1 - Markings Required on Face of Paper Copies

OGC

"It is in conflict with the Order" to permit Agency components to place certain markings (such as the "classified by" line) required by the Order on the inside front covers of bound publications. We should not, of course, publish a regulation that confesses to being in violation of the law. It is our opinion, however, that although the Order requires that these markings shall be placed on the "face" of all paper copies, the Order is not violated, and a rule of reason is being employed, when the inside front cover is used. Markings that indicate the level of classification, however, will be placed on the outside cover to place users on notice of the sensitivity.

Task Force

COMMENT: The words "It is in conflict with the Order", are not printed in HHB []; they were used only in the Issues Paper. Although we are perhaps highlighting in HHB [] two deviations from a strict interpretation of the new Order (see also next paragraph), we feel we must do so to make clear that these are the only two allowed.

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DDO

With regard to paragraph B.1, it is requested that the accommodation to NFAC and DDS&T concerning marking on the face of the document also be extended to the DO to permit placing the markings at the end of Intelligence Information Reports. This request is also based on aesthetic reasons to reduce the clutter on the first page of these reports and thereby enable the busy reader to more quickly assimilate the essential information. Placing of these data at the end of the report would be consistent with the procedure established for electrically transmitted documents (para. 12. h(1) of the Handbook). This suggested procedure would, in fact, make these reports more consistent in format because the large majority of the parenthetical statement in Paragraph 12.b.(2) of the draft handbook should be changed to permit marking of intelligence information reports in this manner.

Task Force

RECOMMENDATION: We agree with this request to place the paragraph 12h classification authority and duration markings at the end of Intelligence Information Reports (both the electrical transmissions and those pouched). Paragraph 12b(1) parenthetical statement will be revised to read, "...on the outside front cover. Intelligence Information Reports may be marked in accordance with paragraph 12h below.)

Paragraph B.2 - Unique Identifiers

DDS&T

We do not believe this is an issue since all classified documents under the EO will show office of origin. This requirement will eliminate classified "blind memos". We believe that the Information Security Oversight Office should provide the design for markings and stamps which would be uniform throughout the government.

Task Force

COMMENT: The classification markings proposed for use in the Agency were included in the Issues Paper because we had been specifically asked whether their uniqueness would identify CIA documents. We concur with the comments above since neither the Order nor ISOO has provided an actual design for these markings.

Paragraph C - Forms

OGC

Paragraph C is incorrect in stating that the Order does not allow retaining pre-printed forms until the current stock is depleted.

Task Force

COMMENT: The intent of the language used in the Issues Paper was to indicate that use or non-use of existing pre-printed forms was not mentioned in E.O. 12065.

Paragraph D - Category g items - paragraph 9g of handbook

NOTE: All comments received on the use of category g have been included here under the "Issues" section.

NFAC

The NFAC Classification Working Group had a number of items under this category provided for in E.O. 12065. This category was used in an effort to promote uniformity in the use of the guide. The option was scattering the subcategories in one or more of the categories a through f. If we are denied use of category g, the subcategories contained under it would need to be reported one or more

times under the remaining six categories leading to confusion on the part of those needing to classify information in the areas of DCI support to the President and the NSC, and in the use of unclassified data.

We believe NFAC needs to use Category g as it promotes uniformity when using the guide to classify. We see no reason why its use would bring the Agency into conflict with ISOO as reasoned in the Issues Paper.

DDS&T

We disagree with the handbook that the only category of information that should be stated in the "catch-all paragraph of the Order is "information that could be expected to place an individual in immediate jeopardy". In the preparation of DDS&T guides, under category g we presented six general areas that we believe are valuable to users of the guide. We believe that these "other categories" should be a determination by the DCI as provided in the Order.

OGC

Paragraph D, relating to section 9g of the handbook, concerns the designation by the DCI that categories of information not covered under section 1-301(a)-(f) of the Order may nevertheless be classified. Such determinations may be made only by an agency head, however, so that inclusion of the "person jeopardy" category must be approved by the Director. This might best be done at the same time the DCI approves regarding the delegation of classification authority.

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Task Force

COMMENT: NFAC (see Attachment C1), DDS&T (see Attachment C2), and OGC all addressed the need for placing certain items requiring classification under the "catch all" category 9g. Since all category g items will have to be approved by the DCI, it might be best, given the 1 December deadline involved, to include all such items under a single request which, if approved, could be issued as a revision to the handbook.

NFAC

It is recommended that the word "immediate" be removed from the subcategory in the Handbook. To define what would place a person in immediate jeopardy would call for a judgment on the part of the classifying official which could not be applied uniformly.

Task Force

RECOMMENDATION: That the proposed removal from the Handbook of the word immediate be made.

Paragraph E - Issuance of an Implementation Handbook

DDS&T

See our comments under TAB A, Para 3c. In addition we believe that all implementing instructions and procedures, including safeguarding, should be in the handbook for ease of use.

OGC

It is our view, pertinent to paragraph E, that the safeguarding language being prepared by the Office of Security should be included in the handbook. It seems to us that safeguarding is perhaps the most important aspect of this Order, and to exclude guidance on this subject from the handbook, which is otherwise fairly inclusive, would be inappropriate.

Task Force

COMMENT: Agree. See second recommendation under Tab A. Chapter VI has been reserved for whatever safeguarding information the review committee feels should be included in the handbook.

Paragraph F - More Restrictive Operating Procedures than Required by E. O. 12065

OGC

As to the proposals of paragraph F that the Agency assume a burden not mandated by the Order, we disagree. First, identifying all derivative classifiers is unnecessary since every supervisor will, as a practical matter, either know or be able to determine readily who has made a particular classification decision. Moreover, such supervisors today must be presumed accountable for the actions of their subordinates. For this reason we believe the additional requirement is not needed.

Second, it is our view that the promulgation of classification guides that direct derivative classification are not required by the Order but are, instead, optional. We believe that using such guides would be administratively impracticable and, moreover, would tend to encourage unthinking application of the instructions contained therein. We cannot dispute that the goal of uniform classification decisions is laudable; however, it is inconceivable that officials who need to protect information will be able to fit even a miniscule portion of the information needed to be classified exactly within levels and durations of classification designated. For this reason, we believe use of the guides as we understand they exist today should not be mandatory. Instead, the

guides should serve merely as a framework upon which classification decisions are to be based. We believe, in effect, that derivative classification by use of guides is impractical and that each classification decision should be an original one.

Also, we believe that any classification guides should be approved by the DDCI and available to anyone who needs to use them.

Task Force

COMMENT: Para 12b(2) of the draft handbook simply requires that each individual that derivatively classifies a document identifies him/herself as the individual that is actually applying such a classification. This is felt to be necessary if individuals exercising such classification authority are to be held accountable for their actions.

The second paragraph of OGC's comment which states that the use of classification guides would, among other things, be "administratively impracticable" and that "each classification decision should be an original one" seems to be quite at variance with the information we have been receiving from the Directorates that are developing these guides. Per the Directorate Focal Point Officers, there seems to be a growing feeling within their Directorates that the guides will be of great value to them in the classification process.

Unless there is a legal objection to the use of the classification guides being developed, we feel that the extent of their final use should be determined by the individual Directorates.

Paragraph G - Availability and Use of All Classification Guides throughout the entire Agency - Paragraph 11.i. of handbook

NFAC

NFAC would need access to the Classification Guides from other directorates to cover subjects not specifically dealt with in NFAC's Guide. Subjects such as personnel, training, evaluations, etc. would be covered in detail by the DDA Guide; use of cover, sources by the DDO; and certain collection systems by the DDS&T.

DDS&T

Para 11i - All guidelines, classification and declassification, should be considered "Agency" guidelines. Suggest the deletion of the last sentence of above cited paragraph. The classification of certain sections

(components) guides will determine the distribution, control channels, storage and proper receipting. We suggest that each Directorate, in accordance with para 6d and the first sentence of 11i of the handbook, designate the officials within the Directorate to receive, store, maintain and serve as a focal point for complete sets of all guides.

Task Force

COMMENT: Para 11.i. of HHB [] states "the DDA Guide is designed for Agency-wide applicability and is to be distributed accordingly." This permits NFAC, other Directorates and Independent Offices to have access to the DDA Guide. DDO, DDS&T and NFAC must establish their own policies for distributing their guides to other directorates.

STAT

Paragraph H - Which Employees Will be Authorized to Use Classification Guides - Paragraph 6.d. of handbook

NFAC

In NFAC there will need to be wider use of Classification Guides than envisioned in this paragraph if we are not to be hung-up by procedures. In short deadline situations, the writer is in the best position to know what sources he used and if he needs to use a guideline for classification.

Task Force

COMMENT: If NFAC has the need for a large number of derivative classifiers who have the need to exercise such authority, they need only to designate them in writing.

Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
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9g. Other categories of information related to the
national security and approved by the
Director of Central Intelligence

(1) Information, documents, or materials specifically
protected by statute or treaty.

(1.1) Foreign cartographic, geographic, or environ-
mental information.

C

30 years-
review

Tab A-
Items 1, 2

(2) Information contained in a compilation of
otherwise unclassified material or data which, in the aggre-
gate or by reason of particular arrangement or juxtaposition,
may require classification as national security information
when assembled and compiled.

(2.1) Assessments, evaluative comments, derogatory
statements or statements on topics that are sensitive to the
subject of a report, compiled from unclassified material,
but which may when appearing in a report be construed to
represent the opinion of the United States Government. (C)

C

20 years-
review

Tab A-
Item 3

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	Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
(2.2) Computer listings or bibliographies which contain title references to classified documents, but which titles themselves are marked unclassified, will be classified if those titles have been expanded through the addition of keywords, etc. These expanded titles constitute abstracts and will be classified at the same level as the document.	S	20 years- review	Tab A- Items 3, 5, 6, 7
(2.3) Assessments, reports, and memoranda which produce estimates or conclusions built upon a series of policy scenarios and exploiting wholly unclassified data published by the foreign state. (C)	C	10 years- review	Tab A- Item 7
(2.4) All material that presents estimates of the costs in either foreign currency or dollars of foreign defense activities and includes tables or narrative that describe the production rates for weapons systems, the order-of-battle for forces, the performance characteristics or capabilities of those forces and weapons, the operations and maintenance practices of the forces, the economic resources--oil, manpower, etc.--consumed by the military forces, or some subset of the aforementioned information.	S	20 years- review	Tab A- Item 3
(2.5) Foreign cartographic, geographic, or environmental information.	S	10 years- review	Tab A- Item 3
(2.6) Applications of unclassified technologies or methodologies to specific intelligence problems, the use of which, if revealed, would disclose sensitive Agency activities or interests.	S	20 years- review	Tab A- Items 3, 6

(3) Information which could disclose the nature or substance of confidential advice given to the President of the United States or to the National Security Council by the Director of Central Intelligence.

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	Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
(3.1) Substantive contributions, memoranda, briefing papers, reports, to include charts, maps and photos, compiled and supplied to the Director of Central Intelligence for use in his role as principal intelligence advisor to the President of the United States.	TS	20 years- review	Tab A- Items 1-7
(3.2) Intelligence produced at the direction of the Director of Central Intelligence specifically for the President of the United States and/or members of the National Security Council.	TS	20 years- review	Tab A- Items 1-7
(4) Information that could reveal the nature or substance of deliberations within the Executive Branch of the United States Government involving policy formulations or other matters relevant to the national security and participated in, or contributed to, by the Director of Central Intelligence or his designated representatives.			
(4.1) Information pertaining to the formulation and implementation of national policy for the control of sensitive compartmented information.	TS	20 years- review	Tab A- Items 3, 4, 5, 6
(4.2) Substantive inputs, memoranda for the record or memoranda of conversations pertaining to Presidential Review Memoranda being drafted or under review by the National Security Council Staff.	S	10 years- review	Tab A- Items 5, 6
(5) Information concerning discussions, negotiations, agreements or relationships between the Director of Central Intelligence or the Central Intelligence Agency and other departments or agencies of the Executive Branch, or the members, committees, and/or staffs of the United States Senate or House of Representatives, or independent establishments or individuals, on matters pertaining to the national security including exchanges of information on, or assessments of, the potential effects of proposed or pending legislation on the missions, functions or activities of the DCI or the CIA.			

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SECRET

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Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
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(5.1) Reserved

(6) Information that could be expected to place an individual in immediate jeopardy.

(6.1) Reserved

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DIRECTORATE OF SCIENCE AND TECHNOLOGY

CLASSIFICATION GUIDE FOR SECURITY INFORMATION

Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
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9g. Other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to Section 1-201, or by an Agency head

(1) Information, documents or materials specifically protected by statute or treaty. (U)

(1.1) Reserved

(2) Information contained in a compilation of otherwise unclassified material or data which, in the aggregate or by reason of particular arrangement or juxtaposition, may require classification as national security information when assembled and compiled. (U)

CLASSIFICATION GUIDE FOR SECURITY INFORMATION

	Level of Classification	Duration of Classification	Justification for Extension Beyond Six Years
(2.1) Applications of unclassified technologies to specific intelligence problems or in specialized intelligence equipment with configurations, packaging, operating environments and technical specifications that if revealed would negate the usefulness of the system or would adversely affect national security, foreign relations or the well being of a cooperating entity.	S	20 years- review	Tab A, Items 3,5,7
(3) Information which could disclose the nature or substance of confidential advice given to the President of the United States or to the National Security Council by the Director of Central Intelligence. (U)			
(3.1) Reserved			
(4) Information that could reveal the nature or substance of deliberations within the Executive Branch of the United States Government involving policy formulations or other matters relevant to the National security and participated in, or contributed to, by the Director of Central Intelligence or his designated representatives. (U)			

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TAB D WAIVERS

NFAC Requested a waiver from the portion classifications requirement of E.O. 12065 for three publications:

(1) The President's Daily Brief

The Markings Task Force could not reach a decision on this request--the reasoning being that the President would be exempting himself from his own rules.

(2) National Intelligence Estimates

(3) Certain Short Deadline Papers

It was recommended by the Task Force that both of these not be forwarded for approval.

I protest vigorously these decisions and feel that NFAC has been more than restrained in seeking waivers from the portion classification requirements of E.O. 12065 in view of the large and varied production we have in the Center. The justification provided by Mr. Walsh in his memorandum of 25 September 1978 requesting waivers meets the criteria specified in E.O. 12065 and is in keeping with the spirit of the Executive Order. The decisions of the Marking Task Force are appealed for reasons given in the memorandum.

Task Force RECOMMENDATION: That the above three waiver requests that have been prepared by Mr. Walsh be forwarded to the Director of ISOO for review and approval.

OGC Regarding the Waivers Paper, we merely wish to comment that we concur with the Task Force proposal, but query whether raw intelligence from technical systems is intended to be covered also. We believe that such data should also be exempted from the mandatory marking requirements.

Task Force COMMENT: Assuming that what is being addressed here are such technical systems as ELINT and PHOTINT, we agree that anyone requiring exemptions from portion markings for such systems prepare waiver requests for submission to the Director of ISOO for review and approval.